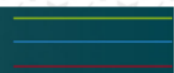




Strategic trade control regimes and systems: appropriate instruments to counter the threat of acquisition of biological and chemical sensitive items ?

Pr. Dr. Quentin Michel

Como, December 1st 2016



Strategic Trade Control: a Multilayers system of control

Strategic trade control regimes

- International set of hard law and soft law ruling transfers of items and technology
- Bio and chemicals: CWC, BWC, Australia Group, Wassenaar Arrangement

Strategic trade control systems

- Regimes commitments national implementation
- Essentially national but could be regional
- EU Regulation 428/2009 as amended

Strategic Trade Control Objectives

Counter the risk of **unfair competition** between suppliers by defining

- Common conditions, criteria of transfers
- Common list of items, catch-all clause
- Exchange of information

Counter the risk of **misuses** of items transferred

- Verification of declared end-use
- Verification of final end user
- Verification of an existing correlation

Strategic Trade Control a preventive instrument

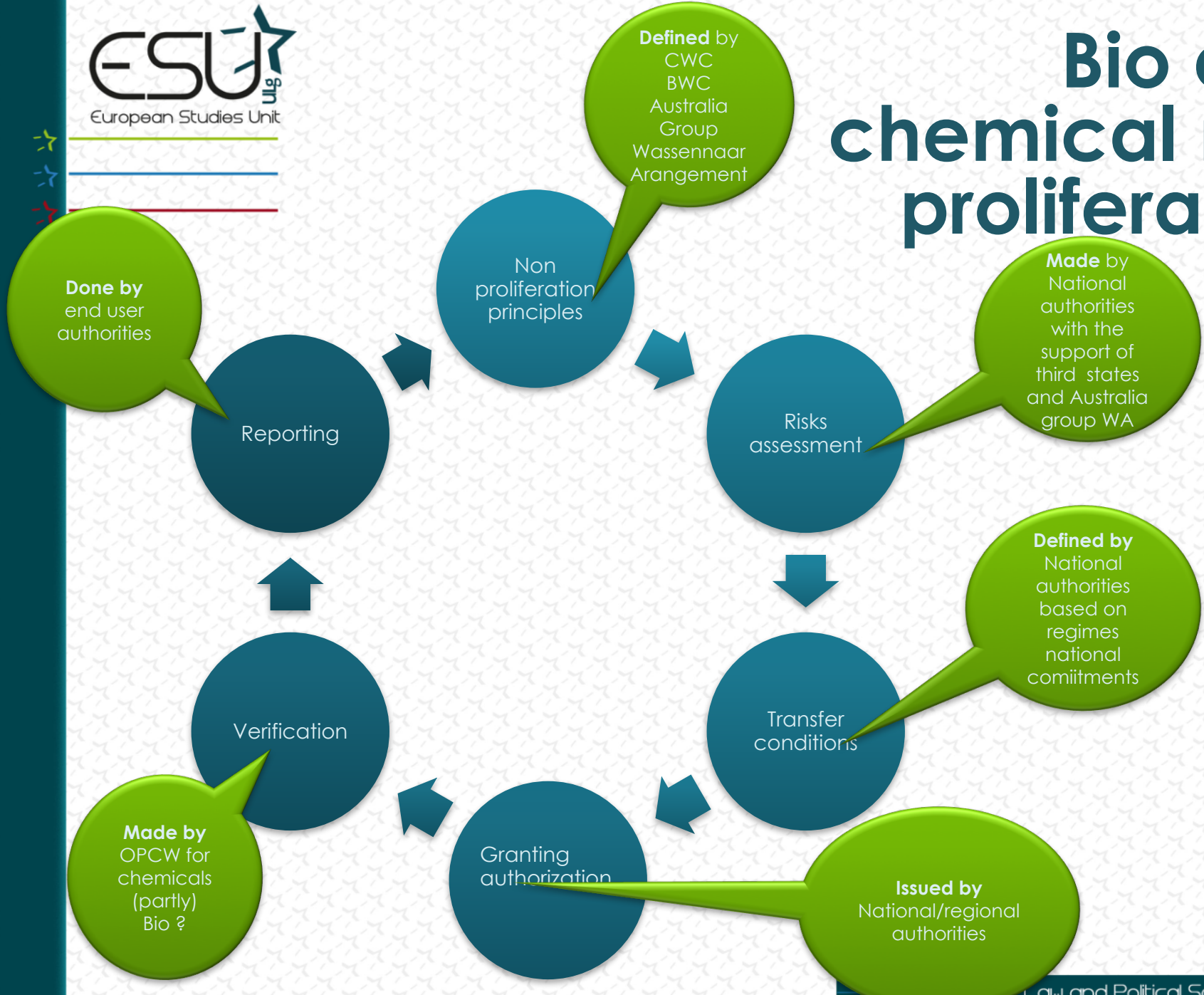
Detection of a potential risk by

- Prohibiting transfer
- Submitting transfer to certain conditions and criteria

Efficiency is highly dependant on information at the disposal of the state authority to assess risk

- Exchanges of information between regimes members
- Intelligence
- Support from third states

Bio and chemical non proliferation



An instrument to control **states rather than non states actors**

International regimes: ruling relation
between States to counter **WMD states
proliferation**

- Conditions, criteria
- Authorisation granted by states
authorities to *certified* **operators**
established on their territory
- Transfer to **non state actors or operators
in conflict zones** are almost impossible

WMD proliferation of **non states actors** has been included in late nineties as an **element** to consider to grant an authorisation

Australia Group Guidelines:

a. Information about **proliferation and terrorism involving** CBW, including any proliferation or terrorism-related activity, or about involvement in clandestine or illegal procurement activities, of the parties to the transaction;

h. The risk of controlled items falling into the **hands of terrorist groups** and individuals

Safeguards and verification: WMD diversity

Nuclear: NPT (article III) NSG guidelines and IAEA

- Comprehensive Safeguards Agreement as conditions of supply
- Regular inspections in the end-user country not only on declared facilities

Chemicals: CWC, Australia Group guidelines, OPCW

- Transfer notification to OPCW of certain chemicals
- Routine inspections on certain facilities using certain chemicals

Biological: BWC, Australia Group Guidelines

Sanctions: a kaleidoscope

National penalties for infringement of the trade control system: a kaleidoscope

- Administrative and criminal sanctions
- Circumstances when infringements are regarded as criminal offences (any case, only intend)
- Investigation and Prosecution

International: Strategic trade control regimes

- No direct sanctions except potential denial for a further transfer
- Peer pressure
- Alert/reporting to the UNSCR

Consequences

Strategic trade control:

- **Instrument to control sensitive transfers between States**
 - Facilitate trade between regimes members
 - Strengthening controls with non States member
- **Focusing on licit trade and not illicit**
Defined indirectly what is illicit
- **Proliferation activities within a State** not involving cross borders movements are not under its scope

Proposals

- Developing **verifications** systems especially for bio
- Defining guidelines/MoU for **sanctions** to counter/reduce the risk of licence shopping
- Raising operators awareness and increasing exchanges of **information** between States authorities on WMD related operators and activities